Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes	)	CC Docket No. 92-133

COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("USWC"), through counsel, hereby files these comments in the above-captioned docket.

In this docket, the Federal Communications Commission ("FCC") seeks comment on possible improvements and refinements to the manner in which the interstate rate of return is prescribed for telephone companies not subject to price cap regulation.[1] As USWC is subject to price cap regulation, it is only marginally affected by the outcome of this proceeding. Accordingly, these comments will be quite brief.

First, the limited focus of this docket must be retained. By its terms, the docket deals only with small local exchange carriers ("LEC") not governed by the FCC's price cap rules.[2] As USWC is subject to price cap regulation, not rate of return regulation, the new rules to be adopted in this docket will not apply to USWC. However, the authorized rate of return is of

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[1] See Amendment of Parts 65 and 69 of the Commission's Rules to Reform the Interstate Rate of Return Represcription and Enforcement Processes, Notice of Proposed Rulemaking and Order, 7 FCC Rcd. 4688 (1992)("Notice").

[2] See id. at 4688-89 ¶¶ 1-9.

interest to, and can directly impact on, USWC in at least three instances: (1) the authorized rate of return sets the parameters of USWC's sharing obligations under the price cap rules;[3] (2) the authorized rate of return could be a relevant factor in the FCC's promised four-year evaluation of the price cap rules,[4] both in terms of the evaluation itself and in terms of a subsequent regulatory structure; and (3) the authorized rate of return could become an important factor should the FCC's price cap rules be reversed on appeal.[5] Because this proceeding applies only to a limited number of carriers -- those not subject to price caps -- in all of these events, the existing rules and rate of return would continue to apply to USWC until after the FCC had taken additional action with respect to USWC's rate of return. USWC has a variety of problems with the existing Part 65 procedures, but does not wish to clutter the record in this proceeding where USWC is not affected by the outcome. The FCC should be sure to reconfirm the limited nature of the proceeding in its final order.

Second, the Notice proposes to rely on data from the larger LECs (such as USWC) to set the rate of return for carriers

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[3]See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd. 6786, 6801-7 ¶¶ 120-65 (1990) ("LEC Price Cap Order").

[4]See id. at 6832 ¶ 372, 6834 ¶¶ 385-88.

[5]See Policy and Rules Concerning Rates for Dominant Carriers, 6 FCC Rcd. 2637 (1991), Erratum, DA 91-539, rel. Apr. 26, 1991) ("LEC Price Cap Recon. Order"), appeal pending sub nom. National Rural Telecom Association v. F.C.C., No. 91-1300 (D.C. Cir. pet. for rev. filed June 26, 1991).

subject to whatever rules are adopted in this proceeding.[6] We rely on the affected carriers to address the propriety of such an approach. However, in terms of data submissions by carriers such as USWC, all necessary and pertinent data is already filed yearly with the carrier's Form M and ARMIS submissions. No more data should be required. In separate comments filed in this proceeding, the United States Telephone Association addresses this issue at length. We concur in those comments.

Third, in the discussion of rate of return enforcement methods, the FCC suggests that it may actually fine a carrier for the offence of earning in excess of a prescribed rate of return.[7] This notion borders on the silly. The FCC, no matter its success in New England v. F.C.C.,[8] should abandon the notion that "overearning" violates the Communications Act or subjects a carrier to any liability whatsoever. If a carrier files a false tariff or otherwise seeks to avoid a proper FCC rate of return prescription in its tariff filing, there are ample remedies available to the FCC.[9] But if a carrier's demand exceeds expectations, or if the carrier is able to reduce expenses below what had been expected, all related profit should belong to the carrier (just as is the case when demand is too little, or

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[6]See Notice, 7 FCC Rcd. at 4693-94 ¶ 41.

[7]See id. at 4702 ¶ 98.

[8]See New England Tel. & Tel. Co. v. F.C.C., 826 F.2d 1101 (D.C. Cir. 1987), cert. denied, 490 U.S. 1039 (1989) ("New England v. F.C.C.").

[9]See, e.g., 18 U.S.C. § 1001.

expenses higher than anticipated). There is simply no reason why the FCC need go any further in the rate of return "enforcement" process than insist on accurate tariff filings.

Respectfully submitted,

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September 11, 1992

CERTIFICATE OF SERVICE

I, Ross Dino, do hereby certify on this 11th day of September, 1992, that I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be hand delivered to the persons named on the attached service list.

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